

<b>Item No.</b> 6	<b>Classification:</b> Open	<b>Date:</b> 24th August 2009	<b>MEETING NAME</b> Licensing Sub-Committee
<b>Report title:</b>		LICENSING ACT 2003 – <b>Lovage Indian Restaurant, Units 13-15 The Circle, Queen Elizabeth Street, SE1 2JE</b>	
Ward(s) or groups affected:		Premises are within: Riverside	
<b>From:</b>		<b>Director of Environment and Housing</b>	

## RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Mohammed Shafiqur Chowdhury for the variation of the Premises Licence granted under the Licensing Act 2003 in respect of the premises known as Lovage Indian Restaurant, Units 13-15 The Circle, Queen Elizabeth Street, London, SE1 2JE.
2. **Notes:**
  - a) *This application forms an application for the variation of a Premises Licence, under Section 34 of the Licensing Act 2003 (A copy of the Premises Licence is attached as Appendix A). The application is subject to representations from Interested Parties and Responsible Authorities and is therefore referred to the Sub-Committee for determination;*
  - b) *Paragraphs 9-12 of this report provide a summary of the application to vary the Premises Licence under consideration by the Sub-Committee (A copy of the full application is provided at Appendix B)*
  - c) *Paragraphs 13 to 16 of this report outline the representations received in respect of the Premises Licence variation application. (Copies of the relevant representations are attached as appendices C to E)*

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003 and came into effect on 24 November 2005. The Act established a new licensing regime for
  - a) The sale of and supply of alcohol;
  - b) The provision of regulated entertainment; and
  - c) The provision of late night refreshment.
4. Within Southwark, this Council wholly administers the licensing responsibility.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are;
  - a) The prevention of crime and disorder;
  - b) The promotion of public safety
  - c) The prevention of nuisance; and
  - d) The protection of children from harm.

6. In carrying out its licensing functions, a licensing authority must also have regard to
  - a) The Act itself;
  - b) The Guidance to the act issued under Section 182 of the Act;
  - c) Secondary regulations issued under the Act;
  - d) The Licensing Authority's own Statement of Licensing Policy
  - e) The application, including the operating schedule submitted as part of the application
  - f) Relevant representations
7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing Justices Licences, Public Entertainment Licences and Night Café Licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions.
8. It was also open to existing operators to simultaneously vary their converted licences and to new operators to apply for new licences under the system. In both cases, the applications process requires the applicant to provide all relevant information under the Act to the licensing authority with copies to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **MATTERS FOR CONSIDERATION**

### **The Application Under Consideration**

9. On the 26<sup>th</sup> September 2006 a licence was granted to Mr A for the premises now known as Lovage Indian Restaurant, Units 13-15 The Circle, Queen Elizabeth Street, London SE1 2JE. On 15<sup>th</sup> July 2008 the licence was transferred to Mr Mohamed Shafique Chowdhury. A copy of the licence is attached as appendix A to this report.
10. On the 25<sup>th</sup> June 2009 Mr Chowdhury submitted an application to vary the premises licence issued in respect of the premises known as Lovage Indian Restaurant, Units 13-15 The Circle, Queen Elizabeth Street, SE1 2JE. The application to vary the Premises Licence is made in accordance with Schedule 34 to the Licensing Act 2003, which is attached to the report as appendix B.
11. The application is to remove conditions 109, 122, 139, 340, 341, 840, 841 and 842. There is no application to amend the hours of operation. Listed below are the conditions that this application refers to:

**109** Alcohol shall not be sold or supplied except during permitted hours and the hours stated below.

- a. On Good Friday, 12 noon to 10.30.p.m.
- b. On Christmas Day, 12 noon to 3.00.p.m. and 7.00.p.m. to 10.30.p.m.
- c. On New Year's Eve, except on a Sunday, 10.00 .a.m. to 11.00.p.m.
- d. On New Year's Eve on a Sunday, 12 noon to 10.30.p.m.

The above restrictions do not prohibit;

- i) During the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- ii) During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- iii) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption

as ancillary to the meals;

iv) Consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;

v) The ordering of alcohol to be consumed off the premises, or the dispatch by the vendor of the alcohol so ordered;

vi) The sale of alcohol to a trader or club for the purposes of the trade or club;

vii) The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

viii) The taking of alcohol from the premises by a person residing there; or

ix) The supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by the persons so supplied; or

x) The supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of alcohol so supplied, if the alcohol is supplied at the expense of their employer or the person carrying on, or in charge of, the business on the premises.

**122** No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies

a. He is the child of the holder of the premises licence

b. He resides in the premises, but is not employed there

c. He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to and from which there is no other convenient means of access or egress

d. The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary. In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as ancillary to their table meals.

**139** No temporary event notice shall be made with relation to this premises.

**340** That all door and windows are to be kept closed except for egress (where there are licensable activities).

**341** That a SIA registered door supervisor will be employed to control admissions to and from the premises.

**840** That CCTV will be installed to the satisfaction of the Metropolitan Police.

**841** That no glasses or bottles are allowed outside of the premises.

**842** That no patrons are allowed outside of the premises after 22:00 each night.

12. The Premises Licence variation application form provides the applicant company's operating schedule. Part P sets out additional measures with reference to the four licensing objectives, that Mr Chowdhury is prepared to undertake in accordance with this variation.

### **Representations from Responsible Authorities**

13. Southwark Police Licensing Office submitted a representation in respect of the application on the 7<sup>th</sup> July 2009. The representation confirms that the police would agree to condition 109, 122,

139 and 341 being removed. However, they state that condition 340, 840, 841 and 842 should remain in force. A copy of their representation is attached as appendix C.

14. The Environmental Protection Team submitted a representation in respect of the application on the 1<sup>st</sup> July 2009. The representation states that they would request condition 340, 841 and 842 remain on the licence as the removal of the conditions would likely cause complaints from residential properties. A copy of the representation is attached as appendix D.
15. There were no representations submitted by any other responsible authorities.

### **Representations from Interested Parties**

16. Representations have been received from 19 interested parties, including the Shad Thames Residents Association. Copies of these representations are attached in appendix E. The representations submitted by interested parties are primarily concerned with the possibility that removing the conditions of the premises licence would result in increased disturbance and anti social behaviour to the area.

### **Additional information on the past operating history of the premises (*for information only*)**

17. During the transition period, the previous licensee Mr A applied to vary the licence to increase the hours of operation. The application received opposition from the Police and fifty local residents, and the matter was considered by members of the Licensing Committee in September 2006, who granted the application in part. Members also imposed additional conditions to the premises licence.
18. During the period of September 2006 and May 2007 a total of 35 complaints were made to the licensing unit from local residents, concerning amongst other things anti social behaviour from customers of the premises.
19. In March 2007 an application requesting a review of the premises licence was made by the Council's Environmental Protection Team. A further nine letters from interested parties and one from the police were received supporting the review. Members considered the review in May 2007 and removed the embedded right to private entertainment and the right to provided recorded sound. They also added a condition that Mr A would be removed as the designated premises supervisor with effect from 1 July 2007. Mr A appeal against this decision to the magistrates court, however this was not successful.
20. An application to vary the designated premises supervisor was made to transfer the licence from Mr A to Mrs A in August 2007. As stated above the licence was transferred to Mr Chowdhury in July 2008. No further complaints have been made to the licensing unit regarding the operation of the premises since the transfer of the licence to Mr Chowdhury.

### **Operating History**

21. The premises were last inspected on 16<sup>th</sup> May 2009. During the course of the inspection it was noted that there was no registered door supervisor working. Mr Chowdhury was issued with a warning letter advising him that this was a breach of condition 341 of the premises licence. As stated, an application to vary the licence was made on the 25<sup>th</sup> June 2009 to remove several conditions of the premises licence and one of them being 341. The police have stated that they are happy for this condition to be removed (see appendix c).

### **Map**

22. A map of the local vicinity is attached as appendix F. Other licensed premises identified within 100 metres of the premises are;

- Tentazioni Fine Foods, Unit 19, The Circle, Queen Elizabeth Street, SE1 2LP  
Licensed for alcohol sales off the premises on Monday to Friday from 07.00 to 20.00; on Saturday from 08.00 to 20.00 and on Sunday from 09.00 to 20.00.
- Hing Lee, 32 Curlew Street, SE1 2ND  
Licensed for alcohol sales on and off the premises and late night refreshment on Monday to Saturday from 11.00 to 00.30 and on Sundays from 12.00 to 00.00.
- The Circle Store, Unit 22 the Circle, Queen Elizabeth Street, SE1 2JE  
Licensed for alcohol sales off the premises on Monday to Sunday from 07.00 to 23.00.
- The Kings Arms, 251 Tooley Street, SE1 2JX  
Licensed for late night refreshment and alcohol sales on and off the premises on Monday to Sunday from 10.00 to 01.30.

### **Southwark Council Statement of Licensing Policy**

23. Council Assembly approved the second revision of Southwark's Statement of Licensing Policy on 2nd April 2008; this policy represents the Council's policy or 2008-2011. Sections of the Statement that are considered to be of particular relevance to this application are

- a) Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
- b) Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
- c) Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d) Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- e) Section 8 provides general guidance on ensuring public safety including safe capacities
- f) Section 9 provides general guidance on the prevention of nuisance
- g) Section 10 provides general guidance on the protection of children from harm.

24. The purpose of Southwark's Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the Sub-Committee when considering the applications. However, the Sub-Committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

### **RESOURCE IMPLICATIONS**

25. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value Band B.

### **CONSULTATIONS**

26. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

### **EQUAL OPPORTUNITIES IMPLICATIONS**

27. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

## **CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE – LEGAL ISSUES**

28. The Sub-Committee is asked to determine the application for a Premises Licence variation under Section 35 of the Licensing Act 2003. The principles, which Sub-Committee members must apply, are set out below.

### **Principles for making the determination**

29. The general principle is that applications for Premises Licence variations must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

30. Relevant representations are those which

- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn.
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

31. If relevant representations are received then the Sub-Committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to;

- Add to, omit, and/or alter the conditions of the licence or,
- Reject the whole or part of the application for variation

### **Conditions**

32. The Sub-Committee's discretion is thus limited. It can grant the application with or without modifications to the conditions, or it can refuse all or part of the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.

33. The four licensing objectives are

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of nuisance; and
- d. The protection of children from harm.

34. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

35. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night cafe and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operations.

36. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

37. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence variation, it must give reasons for its decision.

### **Hearing Procedures**

38. Subject to the Licensing Hearing regulations, the Licensing Committee may determine its own procedures. Key elements of the regulations are that

- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
- Members of the authority are free to ask any question of any party or other person appearing at the hearing
- The committee must allow the parties an equal maximum period of time in which to exercise their rights to
  - Address the authority
  - If given permission by the committee, question any other party.
  - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant
  - to the particular application before the committee, and
  - the licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

39. This matter relates to the determination of an application for a Premises Licence variation under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the Sub-Committee to make its determination at the conclusion of the hearing.

### **Council's multiple roles and the role of the Licensing Sub-Committee**

40. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

41. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

42. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors,

and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

43. The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

44. Members will be aware of the Council's Code of Conduct, which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

45. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-to-case basis.

46. Under the Human Rights Act 1998. the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

47. Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

### **Guidance**

48. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

### **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix A	Premises licence
Appendix B	Variation application
Appendix C	Police representation
Appendix D	Environmental Protection Team representation
Appendix E	Interested parties' representations
Appendix F	Local vicinity map



Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748
Lead Officer	Jonathan Toy, Head of Community Safety and Enforcement	
Report Author	Rosanna Keogh, Principal Licensing Officer	
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Key Decision?	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services		6 <sup>th</sup> August 2009